

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

)
) CC Docket No. 96-59
)
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REPLY COMMENTS OF COMMNET CELLULAR INC.

CommNet Cellular Inc. (CCI) respectfully submits these reply comments in response to the Notice of Proposed Rulemaking and Order Establishing Joint Board (Federal-State Joint Board on Universal Service), CC Docket No. 96-45, FCC 96-93, released Mar. 8, 1996 [hereinafter NPRM], and the initial comments filed in response to the NPRM. CCI requests the Commission to establish contributions that are non-discriminatory and competitively neutral by ensuring that cellular carriers do not double-pay; CCI shows that this objective may be realized by basing the contributions of cellular carriers on gross interstate revenues net of payments to other carriers. CCI also requests the Commission to exempt paging providers from contribution requirements. Additionally, CCI submits that commercial mobile radio services (CMRS) providers should be eligible to receive federal universal service support on an equitable and non-discriminatory basis. Furthermore, CMRS providers should be exempt from state universal service contributions.

Interest of CCI

CCI and its subsidiaries have cellular ownership interests in ten states. CCI also has non-controlling ownership interests

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in other cellular licensees for which it performs system management functions under the overall direction, supervision and control of those licensees. Furthermore, CommNet Paging Inc., a wholly owned subsidiary of CCI, has obtained authority from the FCC to provide paging service.

I. **Contributions Should Be Non-Discriminatory and Competitively Neutral**

CCI agrees with the Personal Communications Industry Association (PCIA) that the rules for determining the identity of universal service contributors, and associated contribution amounts, should be non-discriminatory and competitively neutral.¹ Specifically, the FCC should consider the differences between wireless services, such as cellular and paging, and wireline services, such as local exchange service and interexchange service, as it determines which telecommunications services providers should contribute to universal service and what the level of their contributions should be. In reflecting the differences, CCI believes that the Commission should take into account universal service support which is already built into payments by wireless carriers to local exchange carriers (LECs) and interexchange carriers (IXCs), and the unique circumstances of paging carriers, which should exempt them from payments entirely. These points are discussed below.

¹ PCIA Comments at 6-9.

A. Cellular Carriers Should Not Have to Double-Pay

If the Commission were to require cellular carriers to contribute to universal service, the support mechanism should be designed to ensure that cellular carriers do not contribute to universal service twice.² Cellular carriers obtain services from LECs and IXC; therefore, they currently contribute to universal service through the rates they pay to those carriers. If that were to continue, and if cellular carriers were separately required to make contributions to universal service, cellular carriers would pay twice.

CCI therefore requests the Commission to design its contribution rules to prevent such double-payment. CCI agrees with the suggestion of Vanguard Cellular Systems, Inc. (Vanguard Cellular) that the universal service subsidy should be removed from the interconnection charge imposed by LECs.³ Accordingly, CCI requests the Commission to require LECs and IXCs to price their services to cellular carriers such that their rates do not include the contributions that the LECs and IXCs make to universal service. This could be accomplished as a simple matter of rate design by the LECs and IXCs such as passing on such payments to end users.⁴ This way, LEC end users and IXC end users would make contributions to universal service attributable

² See Vanguard Cellular Systems, Inc. Comments at 5.

³ Id.

⁴ See PCIA Comments at 12-13; AirTouch Communications, Inc. Comments at 11.

to the corresponding LECs and IXC's; cellular end users would make contributions to universal service attributable to the cellular carriers; and cellular carriers would not pay for the universal service contributions attributable to the LECs and IXC's. Such a result supports the competitive neutrality goals of the FCC.⁵

Furthermore, contributions for cellular carriers should be based on gross interstate revenues net of payments to other carriers.⁶ This method would equitably distribute the contribution burden,⁷ and would avoid the imposition of a double-payment on cellular carriers.⁸ Equitable distribution and the prevention of double-payment were two factors considered by the Commission in developing the regulatory fees for this year.⁹

B. The Commission Should Not Require Paging Providers to Contribute to Universal Service

As previously noted, CCI believes that paging carriers should be exempt from universal service requirements. Put simply, it is unlikely that paging carriers will be eligible to

⁵ NPRM, para. 126.

⁶ See Western Wireless Comments at 16; 360° Communications Company Comments at 9.

⁷ Report and Order (Assessment and Collection of Regulatory Fees for Fiscal Year 1995), 10 FCC Rcd. 13,512, 13,558 (1995) (basing regulatory fees on gross interstate revenues, rather than usage or the number of subscribers, equitably distributed regulatory fees) [hereinafter Regulatory Fees Order].

⁸ Id. at 13,559 (subtracting payments to other carriers in determining regulatory fee payments for resellers).

⁹ Id. at 13,558-59.

receive universal service support, given the services they provide. Under these circumstances, it would be manifestly unfair to saddle paging carriers with these payments, especially given the fact that two-way carriers will likely be eligible to receive such funds.¹⁰

Nevertheless, if the Commission were to require paging providers to contribute, the Commission should, at a minimum, set their contribution levels with consideration for the fact that paging providers operate in a highly competitive environment, offer low-price services, and will not be receiving universal service support.¹¹ This constitutes a small step toward ensuring that the contributions of paging providers are equitable as required by Section 254(b)(4) of the Communications Act of 1934, as amended.¹² It also would be consistent with the Commission's decision to assess reduced regulatory fees on paging providers.¹³ In the Regulatory Fees Order, the Commission recognized the fact that the paging industry is very competitive and generally has lower profit margins compared to other public mobile services.¹⁴

¹⁰ Contra Western Wireless Comments at 15 (suggesting that all interstate carriers should contribute).

¹¹ See PCIA Comments at 6-9.

¹² 47 U.S.C. § 254(b)(4); see NPRM, para. 10.

¹³ Regulatory Fees Order, 10 FCC Rcd. at 13,544.

¹⁴ Id.

II. Universal Service Rules Should Ensure that CMRS Providers Are Eligible to Receive Universal Service Support on an Equitable and Non-Discriminatory Basis

CCI agrees with the Cellular Telecommunications Industry Association (CTIA) and Vanguard Cellular that CMRS providers should be eligible to receive universal service support, as long as the requirements of the Telecommunications Act of 1996 are met.¹⁵ Cellular carriers may be able to provide service to rural and high-cost areas at costs far below the cost of providing wireline service.

As stated by PCIA and Western Wireless, and as suggested by Atlantic Cellular to the Joint Board, competitive bidding should be used in rural and high-cost areas to determine the proper level of universal service support.¹⁶ If competitive bidding were to be used, the lowest bidder should receive the support. By allowing CMRS providers to bid, the Commission would help minimize the level of high-cost assistance required to support universal service.¹⁷ Additionally, competitive bidding would place all prospective "eligible telecommunications carriers" on an equal footing.¹⁸ Furthermore, competitive bidding would be

¹⁵ CTIA Comments at 3-4; Vanguard Cellular Comments at 8-9.

¹⁶ PCIA Comments at 15-16; Western Wireless Comments at 12-13; FCC Fields Panelist Comments on Universal Service Options, RCR, at 8, April 22, 1996 (statement of Charles Townsend, CEO of Atlantic Cellular); see AirTouch Communications, Inc. Comments at 7-8, 12; NPRM, paras. 35-36.

¹⁷ NPRM, para. 35.

¹⁸ See Notice of Proposed Rulemaking and Notice of Inquiry (Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board), 10 FCC Rcd. 12,309, 12,342 (1995).

consistent with Section 214(e) of the Communications Act because that section concerns only the service obligations of eligible telecommunications carriers.¹⁹ It does not concern the level of support that would be given to eligible telecommunications carriers.

CCI agrees with 360° Communications Company (360° Communications) that the required service area of service provision for a CMRS provider should not necessarily be a LEC study area, or be defined by the location of a LEC wire center.²⁰ Many LEC study areas are large, representing a substantial portion of the geographical area of a state. CMRS providers may not be able to provide service to such a study area either due to its enormous size, or because the terrain would not be conducive to the provision of wireless services. To ensure competitive neutrality, the Commission should design service areas so that it would be technically and economically feasible for CMRS providers to serve the subscribers in that service area.

CCI further agrees with 360° Communications that the core services receiving universal service support in rural and high-cost areas should be limited to: (a) voice grade access to the public switched telephone network; (b) touch tone service; (c) single party service; (d) access to 911; and (e) access to

¹⁹ 47 U.S.C. § 214(e); see NPRM, para. 35 (asking whether competitive bidding would be consistent with Section 214(e)).

²⁰ 360° Communications Comments at 7-8; see NPRM, para. 33.

operator services, as suggested by the Commission.²¹ These services can be offered by cellular carriers and therefore should not serve as a barrier to entry for such carriers.²²

In considering whether other services should be included in the list of services supported by universal service support mechanisms, now or in the future, the Commission should be mindful of the timeframe for implementation of those services by CMRS providers.²³ For example, any consideration of including enhanced 911 (E911) as a core service should be postponed until the Commission concludes its proceeding in Docket No. 94-102, where the Commission is determining whether to impose E911 compatibility requirements on wireless carriers.²⁴ The inclusion of E911 as a core service right now would unreasonably advantage wireline carriers over CMRS providers, contrary to the Commission's goal of preventing such advantages.²⁵

III. All Consumers Should Benefit from Universal Service Support

The end users who will benefit from universal service support should not be limited to residential customers, schools,

²¹ 360° Communications Comments at 2-3; NPRM, para. 16.

²² See NPRM, para. 17.

²³ See id. para. 23.

²⁴ Additional Comment Sought: Commission Seeks Additional Comment in Wireless Enhanced 911 Rulemaking Proceeding, Public Notice, DA 96-198, released Feb. 16, 1996.

²⁵ NPRM, para. 17; but see National Emergency Number Association Comments at 3 (requesting E911 to be eligible for federal universal service support).

libraries and health care providers, as suggested by Western Wireless.²⁶ Such a limitation would be contrary to the third universal service principle which requires services to be accessible by "consumers in all regions of the Nation."²⁷ Thus, the Communications Act does not support the limitation proposed by Western Wireless.

IV. CMRS Providers Should Not Be Required to Contribute to State Universal Service

Just as paging providers should not have to contribute to federal universal service support if they cannot receive such support, CMRS providers should be exempt from state universal service support contributions if they are prohibited from obtaining universal service support at the state level. CCI therefore agrees with PCIA and AirTouch Communications, Inc. (AirTouch) who favor exempting CMRS providers from state universal service support mechanisms.²⁸ It is noteworthy in this regard that some states have refused to recognize fixed wireless services as an alternative for providing telecommunications services to high-cost areas. If states were to permit fixed wireless services to be eligible telecommunications carriers, CCI would support requirements for CMRS providers to contribute to universal service support at the state level. However, until

²⁶ Western Wireless Comments at 9.

²⁷ 47 U.S.C. § 254(b)(3).

²⁸ PCIA Comments at 9-12; AirTouch Comments at 2-4; see CTIA Comments at 4-9.

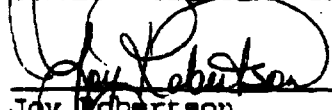
that happens, CCI opposes any requirements for CMRS providers to contribute to state universal service support.

CONCLUSION

For the foregoing reasons, CCI respectfully requests the Commission to ensure that cellular carriers do not double-pay, and to base their contributions on gross interstate revenues net of payments to other carriers. CCI also requests the Commission to exempt paging carriers from contribution requirements. Additionally, CCI requests the Commission: (a) to permit CMRS providers to be eligible telecommunications carriers; (b) to use competitive bidding to determine universal service support levels; and (c) to consider CMRS providers as it defines service areas and the core services that will be eligible for universal service support. Furthermore, CCI requests the Commission to ensure that universal service support is accessible to all end users. Finally, CCI requests that CMRS providers be exempt from state universal service contributions.

Respectfully submitted,

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May 7, 1996

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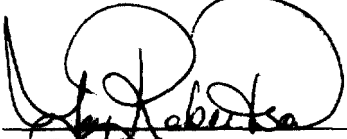
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